

EXHIBIT

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA,

* * *

DENNIS MONTGOMERY and the
MONTGOMERY FAMILY TRUST

Plaintiffs,

vs.

ETREPPID TECHNOLOGIES, LLC;
WARREN TREPP; and the UNITED
STATES DEPARTMENT OF DEFENSE,

Defendants.

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

ORDER RE PROTECTIVE ORDER

AND ALL RELATED MATTERS.

Prior to consolidation of these two related cases, Defendant United States Department of Defense filed Motions for Protective Order (3:06-CV-00056-PMP-VPC, Doc. #83, and 3:06-CV-00145-PMP-VPC, Doc. #51) to prevent disclosure of information that could harm the national security interests of the United States. Specifically, the United States' seeks a protective order pursuant to Federal Rule of Civil Procedure 26(c) to prevent the disclosure of information relating to (1) the existence or non-existence of any actual or proposed relationship, agreement, connection, contract, transaction, communication or meeting of any kind between an intelligence agency as defined in 50 U.S.C. § 401(a)(4), which includes intelligence elements of the military services; and (2) any actual or proposed interest in, application, or use by any intelligence agency, or any current or former official, employee, or representative thereof, of any technology, software, or source code owned or claimed by any individuals or entities associated with these lawsuits.

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1 The United States' supports its application for protective order under the military
2 and States Secret privilege by the Declaration of John D. Negroponte, formally Director of
3 National Intelligence, and a Classified Declaration which has been reviewed by the Court in
4 camera and ex parte, which demonstrate that disclosure of information at issue in this
5 litigation subject to the proposed protective order could be expected to cause serious, and
6 some cases exceptionally grave damage to national security.

7 Issues relating to whether information subject to a claim of military and states
8 secrets privilege were contained in pleadings, motions, declarations and other materials
9 filed in these consolidated cases as well as in the related in the Search Warrant case (3:06-
10 CV-0263-PMP-VPC), have required considerable attention by the parties and the Court. In
11 this regard, counsel for Defendant United States' and those authorized to assert the military and
12 states secrets privilege on behalf of Defendant United States' have met with counsel in these
13 related actions as well as with counsel in the related Search Warrant case, and have reviewed
14 copies of all pleadings, motions, documents and exhibits filed in the above referenced cases
15 for the purpose of identifying and redacting those portions subject to a claim of military and
16 state secrets privilege on behalf of Defendant United States. The Court has reviewed all
17 such papers in camera and ex parte with counsel for Defendant United States' and those
18 authorized to assert the military and states secret privilege on behalf of Defendant United
19 States, and has approved the redaction of material subject to the privilege claim.

20 Defendant United States' Department of Defense Motion for Protective Order
21 has now been fully briefed and on June 12, 2007, the Court conducted a hearing regarding
22 the United States' Motion for Protective Order and other pending motions.

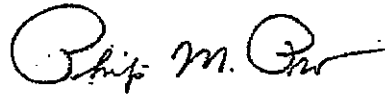
23 On June 21, 2007, Defendant United States' filed a Revised Proposed Protective
24 Order (3:06-CV-00056-PMP-VPC (Doc. #196). The Court finds that said Protective Order
25 is warranted as to form and content and hereby approves the same.

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1 IT IS THEREFORE ORDERED that Defendant United States Department of
2 Defense Motions for Protective Order (3:06-CV-00056-PMP-VPC, Doc. #83, and 3:06-CV-
3 00145-PMP-VPC, Doc. #51) is GRANTED.

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5 DATED: August 29, 2007.

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8 PHILIP M. PRO
9 United States District Judge
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EXHIBIT

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS MONTGOMERY, et al.,

Plaintiffs,

v.

ETREPPID TECHNOLOGIES, INC.,
et al.,

Defendants.

3:06-CV-00056-PMP-VPC
BASE FILE

3:06-CV-00145-PMP-VPC

UNITED STATES PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26, in order to protect the classification, confidentiality and the rights to information and documents developed and disclosed in connection with this litigation, and to facilitate discovery by and among the parties to this action and from third parties, the United States hereby proposes entry of the following protective order.

EXHIBIT

1 IT IS HEREBY ORDERED as follows:

2 1. Certain information that may or may not be relevant to the claims and/or
3 defenses of eTreppid Technologies, LLC and its current or former officers or employees
4 (hereinafter collectively referred to as "eTreppid"), Warren Trepp, Dennis Montgomery, the
5 Montgomery Family Trust and/or Dennis Montgomery and Brenda Montgomery as trustees of
6 the Montgomery Family Trust (hereinafter collectively referred to as "the Parties"), as
7 delineated in paragraphs 2 and 3 below, is subject to the state secrets privilege, the disclosure
8 of which reasonably could be expected to cause serious, and in some cases exceptionally
9 grave, damage to the national security of the United States. Such information shall not be
10 subject to discovery or disclosure by any of the Parties during all proceedings in these actions,
11 and shall be excluded from evidence at trial.

12 2. The Parties shall not serve or take any discovery relating to or questioning the
13 existence or non-existence of any actual or proposed relationship, agreement, connection,
14 contract, transaction, communication or meeting of any kind between any entity in the
15 intelligence community as defined by the National Security Act of 1947,
16 50 U.S.C. § 401(a)(4), which includes intelligence elements of the military services, or any
17 current or former official, employee or representative thereof (hereinafter collectively referred
18 to as "intelligence agency") and the Parties.

19 3. The Parties shall not serve or take any discovery relating to or questioning any
20 actual or proposed intelligence agency interest in, application of or use of any technology,
21 software or source code owned or claimed by the Parties.

22 4. This Order does not preclude the Parties from serving or taking any discovery
23 from other Parties or third parties relating to, or questioning, the following:
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1 a. The existence and nature of the "Big Safari" contract (hereinafter referred to as
2 "the Big Safari Contract") between eTreppid and the United States Air Force, including but not
3 limited to the fact that the Big Safari Contract required eTreppid to perform data analysis and
4 the fact that the data analysis eTreppid performed under the Big Safari Contract involved
5 image identification technology;

6 b. The fact that the Big Safari Contract required employees and/or officers of
7 eTreppid to sign secrecy agreements with the Department of Defense;

8 c. The computer source code, software, programs, or technical specifications
9 relating to any technology owned or claimed by any of the Parties ("the Technology");

10 d. Any contract, relationship, agreement, connection, transaction, communication
11 or meeting of any kind relating to the Technology, unless covered by paragraphs 2 or 3 above;

12 e. Any actual or potential commercial or government applications of the
13 Technology, unless covered by paragraphs 2 or 3 above;

14 f. Facts relating to the issue of ownership by the Parties of any right or interest in
15 the Technology, unless covered by paragraphs 2 or 3 above;

16 g. The revenue, income, expenses, profits and losses of the Parties, unless
17 disclosure of such information would be covered by paragraphs 2 or 3 above; and

18 h. Any consideration received by any of the Parties relating to the Technology,
19 unless covered by paragraphs 2 or 3 above.

20 5. The Parties shall not discuss, mention, question or introduce as evidence, either
21 at trial, in any pleading or motion, or in any case-related correspondence, any actual or
22 proposed relationship, agreement, connection, contract, transaction, communication or
23 meeting of any kind between any intelligence agency and any of the Parties.
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1 6. The Parties shall not discuss, mention, question or introduce as evidence, either
2 at trial, in any pleading or motion, or in any case-related correspondence, any actual or
3 proposed intelligence agency interest in, application of or use of the Technology.

4 7. No question and no document request in discovery or at trial shall require a
5 response that would include any information covered by paragraphs 2, 3, 5 or 6 above, but if
6 the responding party believes that a full and complete response could disclose information
7 within the scope of the state secrets privilege, the responding party shall provide timely notice
8 of such belief and the full and complete response to the United States prior to responding, and
9 shall respond only with information that the United States has determined is not subject to the
10 state secrets privilege.

11 8. The military and state secrets privilege, the claim that any discovery is
12 covered by paragraphs 2 or 3 above, and the claim that any evidence is covered by
13 paragraphs 2 or 3 above, can only be invoked by the United States. These claims cannot be
14 asserted by a private individual or entity.

15 9. All Parties shall serve the attorneys for the United States with (a) a copy of
16 all notices of depositions, (b) a copy of all requests for discovery and responses thereto,
17 and (c) a copy of all pleadings and motions filed together with supporting memoranda
18 (hereinafter collectively referred to as the "documents"), unless such documents request or
19 relate to information covered by paragraphs 2 or 3 above. If the documents request or
20 relate to information covered by paragraphs 2 or 3 above, the Parties shall submit the
21 documents to the United States for privilege review prior to service or filing. All
22 documents filed or sought to be used as evidence by the Parties in this case shall be
23 unclassified. This requirement applies to all motions, pleadings, briefs, and any other
24 document, including exhibits, correspondence, or anything appended thereto or filed
25 therewith. If the United States determines that a document or discovery response includes
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1 information covered by paragraphs 2 or 3 above, the United States shall redact the
2 information and provide the parties and Court with a redacted copy of the document or
3 discovery response.

4 10. The Clerk of the Court shall send attorneys for the United States a copy of all
5 future decisions and notices for hearings in these cases.

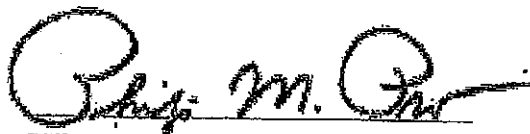
6 11. As the United States deems necessary, attorneys for the United States may
7 attend all depositions and proceedings in this case and may make objections as necessary to
8 protect national security information. If attorneys for the United States assert an objection
9 based on the need to protect national security information with respect to either witness
10 testimony or documents introduced or otherwise relied upon during a deposition, then the
11 witness shall be precluded from testifying with respect to the line of inquiry that engendered
12 the objection, and the document shall be withdrawn from the record pending an order of the
13 Court with respect to the scope of the government's national security objection.

14 12. To protect the United States' interests, attorneys for the United States may
15 participate in any proceeding in these cases, including but not limited to motions hearings, all
16 pre-trial proceedings, or trial by making and opposing motions, submitting briefs, and
17 participating in arguments.

18 13. The United States shall be excepted from all party discovery during the
19 pendency of its motions to dismiss the claims against the Department of Defense.

20 It is so ordered.

21 Dated: August 29, 2007

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25 PHILIP M. PRO
26 United States District Judge
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